

Montana Water Court
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FILED
08/15/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0087-R-2020
Lambert, Kathryn
26.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: ~~Margaret A. Anderson~~ **Joseph A. Weidner**

OBJECTOR: James R. Melin

CASE 43B-0087-R-2020
43B 36724-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

James R. Melin objected to this claim. Before addressing the objection, the following ownership issue remarks on the abstract of this claim were addressed:

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 07/13/2018 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY HOUSE ROLLAND MARK.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 07/13/2018 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY PETERS CAROLE J.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 07/13/2018 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY LORVICK VICKY &.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 07/13/2018 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY RAICH DAVID ALLEN & TRACY J.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 07/13/2018 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY TIDWELL MARVIN LEROY & JOSEMERY BECKER.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 07/13/2018 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY NEFF LIVING TRUST.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 07/13/2018 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY WEIDNER JOSEPH A & DEBORAH A.

The May 20, 2020 Order Consolidating Case And Setting Filing Deadline set a June 30, 2020 deadline for any of these identified persons to file an ownership update. Some did. The September 21, 2020 Order Removing Ownership Issue Remarks From Abstract of Claim, Order Updating The Mailing List, and Order Staying Proceedings removed all of the ownership remarks, and updated the caption and mailing list to reflect the ownership updates which were filed. The Case was stayed due to the large number of parties and the COVID restrictions in place at that time.

In early 2022 the stay was lifted. The March 15, 2022 Court Minutes, Order Entering Defaults, Order Setting Scheduling Conference, and Order Updating Caption And Mailing List states: "The objection was discussed. The parties requested three months for research and discussion, followed by another scheduling conference." A third scheduling conference was held on October 13, 2022. The October 18, 2022 Court Minutes, Order Entering Defaults, and Order Setting Filing Deadline states:

The objection was discussed. A copy of the Park County Water Resources Survey (1951) map for T5S, R9E is attached as requested. The claimants agreed to a deadline for filing their determinations whether to maintain or withdraw the claim. Therefore, it is

ORDERED that the deadline for the claimants to file their written statements is **November 14, 2022.**

Some of the claimants filed withdrawals of their interests. For the others, a series of orders were issued entering defaults for parties who failed to appear at scheduling conferences or failed to comply with orders setting deadlines, followed by orders setting deadlines for those defaulted parties to show cause in writing why their interests in this claim should not be dismissed. By February 8, 2023 all of the claimants except Glenn Goodrich and Teresa R. Marceron had withdrawn their interests or were defaulted and their interests were dismissed.

The February 8, 2023 Order Entering Defaults and Order Setting Deadline For Glenn Goodrich And Teresa R. Marceron To Show Cause Why Their Ownership Interests In This Claim Should Not Be Terminated states:

As a sanction for their failures to comply with the Court's December 14, 2022 Order Extending Filing Deadline For Goodrich And Marceron, pursuant to Rule 22, W.R.Adj.R., it is

ORDERED that the deadline is **March 17, 2023** for Glenn Goodrich and Teresa R. Marceron to show cause in writing why the Court should not conclude each of their failures to comply with the Court's December 14, 2022 Orders means each of them have determined they do not want to maintain claim 43B 36724-00 and have determined that the Court should proceed with removing each of their names from the ownership of claim 43B 36724-00. For each person who fails to show cause in writing by January 31, 2023, the Court will proceed with removing that person's name as an owner of claim 43B 36724-00.

Nothing was filed. It appeared the Case was ready for Master's Report except a new name was added to the ownership: Margaret A. Anderson.

The May 25, 2023 Order Entering Defaults And Updating Caption And Mailing and Order Setting Deadline For Margaret A. Anderson To Show Cause Why Her Ownership Interest In This Claim Should Not Be Terminated states:

Margaret A. Anderson now appears as a claimant on the abstract of this claim based on a DOR ownership update from Margaret A. Goertz to Margaret A. Anderson. Margaret A. Goertz's interest in this claim was terminated in the February 8, 2023 Order Updating Caption and Mailing List. Therefore, it is

ORDERED that the deadline is **June 26, 2023** for Margaret A. Anderson to show cause in writing why the Court should not conclude that Margaret A. Anderson should be removed from the ownership of this claim because her predecessor's interest was terminated in the February 8, 2023 Order Updating Caption and Mailing List. If nothing is filed by Margaret A. Anderson by the deadline, the Court will conclude Ms. Anderson agrees the Court should proceed with removing her name from the ownership of claim 43B 36724-00.

Nothing was filed. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

Rule 22, W.R.Adj.R., states in part:

RULE 22. SANCTIONS. If a claimant . . . fails to appear at a scheduling conference or hearing, or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Sanctions applied against claimants may include termination of the claim.

FINDINGS OF FACT

1. The Margaret A. Anderson failure to comply with the Court's May 25, 2023 Order means she has determined that the Court should proceed with removing her name from the ownership of claim 43B 36724-00. Margaret A. Anderson should be removed from the ownership of this claim.

2. As every claimant has either withdrawn their interest in this claim or had their interest terminated due to their defaults and failure to show cause why the Court should not conclude they do not want to maintain claim 43B 36724-00, claim 43B 36724-00 should be dismissed.

3. The James R. Melin objection is now resolved by the dismissal of the claim.

CONCLUSION OF LAW

The withdrawals of interest in claim 43B 36724-00 filed by some of the claimants and the termination of all other claimants' interests after their failures to show cause in writing why the Court should not conclude that the claimants do not want to maintain claim 43B 36724-00, are sufficient to dismiss this claim. Rule 22, W.R.Adj.R.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court dismiss claim 43B 36724-00 pursuant to Rule 22, W.R.Adj.R. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended dismissal

has been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service Via USPS Mail:

James R. Melin
305 Mill Creek Rd
Livingston, MT 59047

Joseph A. Weidner
79 Dexter Peak Rd
Livingston, MT 59047

Last Order:
Margaret A. Anderson
108 Elbow Creek Rd.
Livingston, MT 59047

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: **43B 36724-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: JOSEPH A WEIDNER
 79 DEXTER PEAK RD
 LIVINGSTON, MT 59047 8733

Priority Date:

Type of Historical Right:

Purpose (use): IRRIGATION

Flow Rate:

Volume:

Source Name: MILL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.